

Sauer, John

From: Sauer, John
Sent: Thursday, October 13, 2022 4:47 PM
To: 'Kirschner, Adam (CIV)'
Cc: Snow, Kyla (CIV); Cholera, Kuntal (CIV); murrille@ag.louisiana.gov; Capps, Kenneth; Talent, Michael; Sur, Indraneel (CIV); Jenin Younes; John Vecchione; Jonathon Burns; Megan Wold; Brian Barnes; Scott, Todd
Subject: RE: [EXTERNAL] RE: 3:22-cv-01213-Missouri et al v. Biden - Requested Witnesses for Deposition

Adam-

Thank you for meeting and conferring with us again today. We appreciated both parties' attempts to reach agreement. Based on our conversation today, we continue to understand your clients' "red lines" to include (among other things) that they will not agree to *any* depositions at all if we plan to request the depositions of any White House official(s), and that they will not agree to the depositions of any witnesses or defendants not identified in the original complaint filed on May 5 (such as State Department, FBI, and Census Bureau)—notwithstanding the wealth of additional information about federal censorship activities that has come to light since then. We continue to believe that those depositions are extremely important to our request for preliminary injunctive relief, to uncovering the full scope and nature of the communications between federal officials and social-media companies on censorship, and to ensuring that our clients receive effective relief. Accordingly, we plan to request depositions of White House, State Department, and FBI official(s), among others. Because this appears to cross your clients' "red lines," we propose agreeing to disagree. Please be prepared to provide us with your half of the joint statement by 5:00 pm Eastern tomorrow afternoon.

Thanks, John

From: Kirschner, Adam (CIV) <Adam.Kirschner@usdoj.gov>
Sent: Thursday, October 13, 2022 4:35 PM
To: Sauer, John <John.Sauer@ago.mo.gov>
Cc: Snow, Kyla (CIV) <Kyla.Snow@usdoj.gov>; Cholera, Kuntal (CIV) <Kuntal.Cholera@usdoj.gov>; murrille@ag.louisiana.gov; Capps, Kenneth <Kenneth.Capps@ago.mo.gov>; Talent, Michael <Michael.Talent@ago.mo.gov>; Sur, Indraneel (CIV) <Indraneel.Sur@usdoj.gov>; Jenin Younes <jenin.younes@ncla.legal>; John Vecchione <john.vecchione@ncla.legal>; Jonathon Burns <john@burns-law-firm.com>; Megan Wold <mwold@cooperkirk.com>; Brian Barnes <BBarnes@cooperkirk.com>; Scott, Todd <Todd.Scott@ago.mo.gov>
Subject: RE: [EXTERNAL] RE: 3:22-cv-01213-Missouri et al v. Biden - Requested Witnesses for Deposition

Hi John,

We have given our discussion today further thought. If you are willing to propose a list of 5 individuals for a global deal on these depositions that is consistent with the "red lines" we have identified and with the other points we discussed, then we think it makes sense to continue the conversation and to move to extend the joint statement due date to

Wednesday, October 20. We suggest an extension to Wednesday, if it is worth continuing this conversation, due to some availability limitations on our end as well as to ensure the parties have sufficient time to discuss the proposals with multiple clients.

But, if you are insisting on overcoming our “red lines” or want to extend to a broader set of depositions, then we think it makes sense to move forward with filing the joint statement tomorrow.

Let us know your thoughts.

Thanks,
Adam

From: Sauer, John <John.Sauer@ago.mo.gov>
Sent: Wednesday, October 12, 2022 5:45 PM
To: Kirschner, Adam (CIV) <Adam.Kirschner@usdoj.gov>
Cc: Snow, Kyla (CIV) <Kyla.Snow@usdoj.gov>; Cholera, Kuntal (CIV) <Kuntal.Cholera@usdoj.gov>; murrille@ag.louisiana.gov; Capps, Kenneth <Kenneth.Capps@ago.mo.gov>; Talent, Michael <Michael.Talent@ago.mo.gov>; Sur, Indraneel (CIV) <Indraneel.Sur@usdoj.gov>; Jenin Younes <jenin.younes@ncla.legal>; John Vecchione <john.vecchione@ncla.legal>; Jonathon Burns <john@burns-law-firm.com>; Megan Wold <mwold@cooperkirk.com>; Brian Barnes <BBarnes@cooperkirk.com>; Scott, Todd <Todd.Scott@ago.mo.gov>
Subject: RE: [EXTERNAL] RE: 3:22-cv-01213-Missouri et al v. Biden - Requested Witnesses for Deposition

Yes, 2pm Eastern/1pm Central tomorrow will work. We will send a WebEx invite. Thanks, John

From: Kirschner, Adam (CIV) <Adam.Kirschner@usdoj.gov>
Sent: Wednesday, October 12, 2022 4:44 PM
To: Sauer, John <John.Sauer@ago.mo.gov>
Cc: Snow, Kyla (CIV) <Kyla.Snow@usdoj.gov>; Cholera, Kuntal (CIV) <Kuntal.Cholera@usdoj.gov>; murrille@ag.louisiana.gov; Capps, Kenneth <Kenneth.Capps@ago.mo.gov>; Talent, Michael <Michael.Talent@ago.mo.gov>; Sur, Indraneel (CIV) <Indraneel.Sur@usdoj.gov>; Jenin Younes <jenin.younes@ncla.legal>; John Vecchione <john.vecchione@ncla.legal>; Jonathon Burns <john@burns-law-firm.com>; Megan Wold <mwold@cooperkirk.com>; Brian Barnes <BBarnes@cooperkirk.com>; Scott, Todd <Todd.Scott@ago.mo.gov>
Subject: Re: [EXTERNAL] RE: 3:22-cv-01213-Missouri et al v. Biden - Requested Witnesses for Deposition

Hi John,

Would 2 Eastern tomorrow work for you? If so, could you send a calendar invite?

Thanks,
Adam

On Oct 12, 2022, at 4:52 PM, Sauer, John <John.Sauer@ago.mo.gov> wrote:

Dear Counsel-

Thank you for taking the time to meet and confer yesterday, and for providing a counter-proposal to our request for depositions of witnesses. As I discussed on the call, we envisioned a process whereby we might take our initial list of proposed witnesses and discuss the possibility of a narrowed list of one or two witnesses in each of the general areas (White House, FBI, HHS, DHS/CISA, Census, and State). Instead, you offered a different counter-proposal that asserted: (1) You are not willing to produce any White House officials for deposition. This includes Psaki, Slavitt, and Flaherty from our original proposed list. This is a “red line” to you, i.e., if we plan to request the Court’s authorization to depose any White House officials, you will not agree to any depositions at all, and will oppose our taking any depositions. (2) You object to producing “high-level” officials for deposition. To you, this includes Psaki, Slavitt, Flaherty, Fauci, Murthy, Easterly, and Silvers from our original proposed list. (3) You object to producing any former government officials who have left the federal government. You stated that this includes Psaki, Slavitt, Jankowicz, Masterson, and Stewart from our original proposed list. (4) You object to depositions of witnesses whose agencies were not sued in the original complaint filed on May 5, 2022 (this would exclude witnesses from White House, FBI, Census, and State on our list). (5) If you are agree to any depositions, you would require (A) an agreed subject-matter limitation on questioning that would restrict questions to issues directly related to the PI motion, and (B) an agreement that any witness deposed in expedited PI-related discovery could not be re-deposed during merits discovery absent a showing of “good cause.” If we are willing to agree to these five conditions (including sub-parts), you would be willing to agree to three depositions: (1) Lesko or Waldo from the Office of Surgeon General, (2) Crawford or Dempsey from HHS/CDC, and (3) Geoff Hale from CISA.

We have considered your proposal and think that the parties are unlikely to reach agreement. (1) We disagree with your insistence that no White House officials be deposed. As stated in our pleadings, these witnesses have unique knowledge of central relevance to our case and PI motion, and their depositions are of high importance to us. (2) We dispute your characterization of certain witnesses as “high-level,” and we do not agree to this restriction in any event, particularly because the documents produced so far demonstrate that these very witnesses have unique knowledge of critical communications that cannot be obtained from other sources. (3) We disagree with your objection to producing former federal officials. We are seeking discovery related to their (quite recent) work as federal officials, not anything related to their new jobs (whatever those may be). DOJ frequently produces such witnesses for deposition voluntarily, and they can be served with third-party subpoenas for deposition if necessary in any event. (4) We disagree that current defendants and officials from agencies that we have already sued are irrelevant to our request for preliminary injunctive relief, and so we disagree with this artificial restriction as well. If anything, obtaining discovery regarding newly disclosed officials is even more urgent from our

perspective. (5)(A) We might be willing to agree in principle to a subject-matter limitation that questions in depositions must be relevant to our PI motion, but we doubt that the parties would see eye-to-eye on whether certain lines of questioning are relevant, and I would be reluctant to agree to any language that could lead to prolonged attorney disputes during depositions or open the door to attorneys defending depositions demanding an explanation of the relevance of certain lines of questioning before they are completed (and thus effectively coaching witnesses). (5)(B) We do not agree that a deposition during expedited PI-related discovery forecloses a deposition of the same witness during merits discovery.

In short, the parties seem far apart at this time. That said, we propose having a second conference to meet and confer on these issues tomorrow, to see if any further progress can be made. I have a meeting at 3:00pm Eastern/2:00pm Central but most other times will work. Please let us know your availability for a conference tomorrow.

Thanks, John

From: Sauer, John
Sent: Sunday, October 9, 2022 6:38 AM
To: 'Snow, Kyla (CIV)' <Kyla.Snow@usdoj.gov>; Kirschner, Adam (CIV) <Adam.Kirschner@usdoj.gov>; Cholera, Kuntal (CIV) <Kuntal.Cholera@usdoj.gov>; 'Murrille@ag.Louisiana.Gov' <murrille@ag.louisiana.gov>; Capps, Kenneth <Kenneth.Capps@ago.mo.gov>; Talent, Michael <Michael.Talent@ago.mo.gov>
Cc: Sur, Indraneel (CIV) <Indraneel.Sur@usdoj.gov>; Jenin Younes <jenin.younes@ncla.legal>; 'John Vecchione' <john.vecchione@ncla.legal>; 'Jonathon Burns' <john@burns-law-firm.com>; Megan Wold <mwold@cooperkirk.com>; 'Brian Barnes' <BBarnes@cooperkirk.com>
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Kyla – Tuesday at 1:30 Eastern/12:30 Central will work for us. We'll send a WebEx invite.

Thanks, John

From: Snow, Kyla (CIV) <Kyla.Snow@usdoj.gov>
Sent: Saturday, October 8, 2022 4:07 PM
To: Sauer, John <John.Sauer@ago.mo.gov>; Kirschner, Adam (CIV) <Adam.Kirschner@usdoj.gov>; Cholera, Kuntal (CIV) <Kuntal.Cholera@usdoj.gov>; 'Murrille@ag.Louisiana.Gov' <murrille@ag.louisiana.gov>; Capps, Kenneth <Kenneth.Capps@ago.mo.gov>; Talent, Michael <Michael.Talent@ago.mo.gov>
Cc: Sur, Indraneel (CIV) <Indraneel.Sur@usdoj.gov>; Jenin Younes <jenin.younes@ncla.legal>; 'John Vecchione' <john.vecchione@ncla.legal>; 'Jonathon Burns' <john@burns-law-firm.com>; Megan Wold <mwold@cooperkirk.com>; 'Brian Barnes' <BBarnes@cooperkirk.com>
Subject: RE: 3:22-cv-01213-Missouri et al v. Biden - Requested Witnesses for Deposition

John,

We're available for an initial meet and confer on Tuesday at 1:30 pm ET. I'll note that we have a hard stop at 3 pm, although I don't necessarily anticipate the meet and confer going that long. Please let us know if 1:30 pm ET works for you.

Best,
Kyla

From: Sauer, John <John.Sauer@ago.mo.gov>
Sent: Friday, October 7, 2022 4:20 PM
To: Kirschner, Adam (CIV) <Adam.Kirschner@usdoj.gov>; Cholera, Kuntal (CIV) <Kuntal.Cholera@usdoj.gov>; 'Murrille@ag.Louisiana.Gov' <murrille@ag.louisiana.gov>; Capps, Kenneth <Kenneth.Capps@ago.mo.gov>; Talent, Michael <Michael.Talent@ago.mo.gov>
Cc: Snow, Kyla (CIV) <Kyla.Snow@usdoj.gov>; Sur, Indraneel (CIV) <Indraneel.Sur@usdoj.gov>; Jenin Younes <jenin.younes@ncla.legal>; 'John Vecchione' <john.vecchione@ncla.legal>; 'Jonathon Burns' <john@burns-law-firm.com>; Megan Wold <mwold@cooperkirk.com>; 'Brian Barnes' <BBarnes@cooperkirk.com>
Subject: [EXTERNAL] 3:22-cv-01213-Missouri et al v. Biden - Requested Witnesses for Deposition

Dear Counsel-

Pursuant to Paragraph C(5) the Court's order authorizing expedited discovery, Doc. 34, “[w]ithin ten days after the production of any objected-to responses [i.e., today], Plaintiff States shall notify Government Defendants of any depositions the Plaintiff States wish to take.” We have identified the following list of witnesses whose depositions we would like to take:

Jennifer Psaki
Anthony Fauci
Andrew Slavitt
Rob Flaherty
Laura Dehmlow
Elvis Chan
Vivek Murthy
Carol Crawford
Jay Dempsey
Eric Waldo
Max Lesko
Rob Silvers
Jen Easterly
Nina Jankowicz
Lauren Protentis
Matthew Masterson
Jennifer Shopkorn
Zachary Henry Schwartz
Samaruddin K. Stewart
Daniel Kimmage

Pursuant to Paragraph C(6), we are to meet and confer about these depositions over the next seven days, and if agreement is not reached, we are to submit a joint statement to the Court about our positions on any agreement about the depositions. We propose planning to have conferences to discuss our request at least twice next week, with an initial conference on Tuesday afternoon, Oct. 11. Please let us know your availability to meet and confer on that date.

Thanks,

John Sauer

From: Sauer, John
Sent: Friday, October 7, 2022 5:14 AM
To: 'Kirschner, Adam (CIV)' <Adam.Kirschner@usdoj.gov>; Cholera, Kuntal (CIV) <Kuntal.Cholera@usdoj.gov>; Murrille, Ag. Louisiana Gov; Capps, Kenneth <Kenneth.Capps@ago.mo.gov>; Talent, Michael <Michael.Talent@ago.mo.gov>
Cc: Snow, Kyla (CIV) <Kyla.Snow@usdoj.gov>; Sur, Indraneel (CIV) <Indraneel.Sur@usdoj.gov>
Subject: RE: 3:22-cv-01213-Missouri et al v. Biden

Dear Counsel-

Attached please find a PDF courtesy copy of the Second Amended Complaint and Exhibits P and Q that we filed last night. As you will see, the Second Amended Complaint adds several new defendants, who are also listed below. They are all federal agencies and/or federal officials sued in their official capacity. As with the First Amended Complaint, please let us know if you will accept this email as electronic service of the Second Amended Complaint on behalf of the new defendants.

Thanks, John

SAC – New Defendants:

ANDREW SLAVITT, in his official capacity as White House Senior COVID-19 Advisor,

ROB FLAHERTY, in his official capacity as Deputy Assistant to the President and Director of Digital Strategy at the White House,

COURTNEY ROWE, in her official capacity as White House Covid-19 Director of Strategic Communications and Engagement,

CLARKE HUMPHREY, in her official capacity as White House Digital Director for the Covid-19 Response Team,

BENJAMIN WAKANA, in his official capacity as the Deputy Director of Strategic Communications and Engagement at the White House COVID-19 Response Team,

SUBHAN CHEEMA, in his official capacity as Deputy Director for Strategic Communications and External Engagement for the White House Covid-19 Response Team,

DORI SALCIDO, in her official capacity as White House Covid-19 Director of Strategic Communications and Engagement,

TIMOTHY W. MANNING, in his official capacity as White House Covid-19 Supply Coordinator,

DANA REMUS, in her official capacity as Counsel to the President,

AISHA SHAH, in her official capacity as White House Partnerships Manager,

LAURA ROSENBERGER, in her official capacity as Special Assistant to the President,

MINA HSIANG, in her official capacity as Administrator of the U.S. Digital Service within the Office of Management and Budget in the Executive Office of the President,

U.S. DEPARTMENT OF JUSTICE,

FEDERAL BUREAU OF INVESTIGATION,

LAURA DEHMLOW, in her official capacity as Section Chief for the FBI's Foreign Influence Task Force,

ELVIS M. CHAN, in his official capacity as Supervisory Special Agent of Squad CY-1 in the San Francisco Division of the Federal Bureau of Investigation,

JAY DEMPSEY, in his official capacity as Social Media Team Lead, Digital Media Branch, Division of Public Affairs at the CDC,

KATE GALATAS, in her official capacity as Deputy Communications Director at the CDC,

ERIC WALDO, in his official capacity as Chief Engagement Officer for the Surgeon General,

YOLANDA BYRD, in her official capacity as a member of the Digital Engagement Team at HHS,

CHRISTY CHOI, in her official capacity as Deputy Director, Office of Communications, HRSA within HHS,

TERICKA LAMBERT, in her official capacity as Director of Digital Engagement at HHS and Deputy Director of the Office of Digital Strategy at the White House,

JOSHUA PECK, in his official capacity as Deputy Assistant Secretary for Public Engagement at HHS,

JANELL MUHAMMED, in her official capacity as Deputy Digital Director at HHS,

MATTHEW MASTERSON, in his official capacity as Senior Cybersecurity Advisory within CISA in the Department of Homeland Security,

LAUREN PROTENTIS, in her official capacity as an official of CISA,

GEOFFREY HALE, in his official capacity as an official of CISA,

ALLISON SNELL, in her official capacity as an official of CISA,

KIM WYMAN, in her official capacity as CISA's Senior Election Security Lead,

BRIAN SCULLY, in his official capacity as an official of DHS and CISA,

ZACHARY HENRY SCHWARTZ, in his official capacity as Division Chief for the Communications Directorate at the U.S. Census Bureau,

LORENA MOLINA-IRIZARRY, in her official capacity as an official of the Census Bureau,

KRISTIN GALEMORE, in her official capacity as Deputy Director of the Office of Faith Based and Neighborhood Partnerships at the Census Bureau,

U.S. FOOD AND DRUG ADMINISTRATION,

ERICA JEFFERSON, in her official capacity as Associate Commissioner for External Affairs within the Office of the Commissioner at the U.S. Food and Drug Administration,

MICHAEL MURRAY, in his official capacity as Acquisition Strategy Program Manager for the Office of Health Communications and Education at the FDA,

BRAD KIMBERLY, in his official capacity as Director of Social Media at the FDA,

U.S. DEPARTMENT OF STATE,

LEAH BRAY, in her official capacity as Acting Coordinator of the State Department's Global Engagement Center,

SAMARUDDIN K. STEWART, in his official capacity as Senior Technical Advisor and/or Senior Advisor for the Global Engagement Center of the State Department,

DANIEL KIMMAGE, in his official capacity as Acting Coordinator for the Global Engagement Center at the State Department,

ALEXIS FRISBIE, in her official capacity as a member of the Technology Engagement Team at the Global Engagement Center at the State Department,

U.S. DEPARTMENT OF TREASURY,

WALLY ADEYEMO, in his official capacity as Deputy Secretary of the Treasury,

U.S. ELECTION ASSISTANCE COMMISSION,

MARK A. ROBBINS, in his official capacity as Interim Executive Director of the EAC, and

KRISTEN MUTHIG, in her official capacity as Director of Communications for the EAC

From: Kirschner, Adam (CIV) <Adam.Kirschner@usdoj.gov>
Sent: Tuesday, September 27, 2022 5:54 PM
To: Cholera, Kuntal (CIV) <Kuntal.Cholera@usdoj.gov>; Sauer, John <John.Sauer@ago.mo.gov>;
Murrille@ag.Louisiana.Gov; Capps, Kenneth <Kenneth.Capps@ago.mo.gov>; Talent, Michael
<Michael.Talent@ago.mo.gov>
Cc: Snow, Kyla (CIV) <Kyla.Snow@usdoj.gov>; Sur, Indraneel (CIV) <Indraneel.Sur@usdoj.gov>
Subject: RE: 3:22-cv-01213-Missouri et al v. Biden

Counsel,

A production has been posted on JEFS for your download. In addition, please find attached six documents: (a) four amended discovery responses; and (b) two organizational charts that we plan on bate stamping at a later date.

I will follow-up with another email that does not contain the attachments asking you to confirm receipt of the six documents.

Thank you,

Adam Kirschner
Senior Trial Counsel
United States Department of Justice
Civil Division, Federal Programs Branch
Washington, DC 20530
Phone: (202) 598-3846
Adam.Kirschner@usdoj.gov

From: Cholera, Kuntal (CIV) <Kuntal.Cholera@usdoj.gov>
Sent: Wednesday, August 17, 2022 9:17 PM
To: Sauer, John <John.Sauer@ago.mo.gov>; Murrille@ag.Louisiana.Gov; Capps, Kenneth
<Kenneth.Capps@ago.mo.gov>; Talent, Michael <Michael.Talent@ago.mo.gov>
Cc: Snow, Kyla (CIV) <Kyla.Snow@usdoj.gov>; Sur, Indraneel (CIV) <Indraneel.Sur@usdoj.gov>;
Kirschner, Adam (CIV) <Adam.Kirschner@usdoj.gov>
Subject: 3:22-cv-01213-Missouri et al v. Biden

Counsel,

Today, the contact you identified for us (Jeff Johnson) should be able to access our first production—containing over a thousand communications and documents, which we expect will represent a majority of the documents Defendants will produce—in response to Plaintiffs' Requests for the Production of Documents.

Further, attached are our Responses and Objections to Plaintiffs' Requests for the Production of Documents and Plaintiffs' Interrogatories. As noted in our Responses and Objections to Plaintiffs' Requests for the Production of Documents, Defendants intend to make rolling productions as additional documents become ready for production.

Let us know, of course, if there are any technical issues with tonight's production.

Thank you,
Kuntal, Indraneel, and Kyla

Kuntal Cholera
Trial Attorney, Federal Programs Branch
U.S. Department of Justice
202.305.8645

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